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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,666	08/29/2001	Christian Benz	031211-063	4789
21832	7590	05/01/2006	EXAMINER	
MCCARTER & ENGLISH LLP CITYPLACE I 185 ASYLUM STREET HARTFORD, CT 06103			BURLESON, MICHAEL L	
			ART UNIT	PAPER NUMBER
			2625	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/940,666	BENZ ET AL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michael Burleson	2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 January 2006.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 17 and 18 is/are allowed.
- 6) Claim(s) 1-7 and 10-15 is/are rejected.
- 7) Claim(s) 8,9 and 16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.

- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see pages 9-12, filed 01/09/2006, with respect to the rejection(s) of claim(s) 1-18 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Setchell US 6836345 and Kiyokawa US 2003/0112334.

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3,7,10-12,14 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Setchell US 6836345.
3. Regarding claim 1, Setchell discloses a process for the manufacture of a digital color picture from an original, comprising the steps of:
  4. photoelectrically scanning the original by way of a color-enabled scanning device for obtaining scanning data; forming the digital color picture from the scanning data (column 3,lines 32-34).
  5. transforming the digital color picture by way of a color transformation for achieving a colorimetric correspondence between the digital color picture and a reference color test picture produced by way of an analog production line, wherein said color transformation is independent of parameters associated with said analog production line (column 3,lines 28-40).
  6. at least one of storing the transformed digital color picture in a preselected format and recording the digital color picture on a data carrier medium (column 3,lines 37-40).
7. Regarding claim 2, Setchell discloses the step of transforming is carried out according to color management principles by using a specific profile which describes a combination of type-specific colorimetric properties of the original and a specific transfer function of the scanning device (column 3,lines 48-65).
8. Regarding claim 3, Setchell discloses providing a profile for each of a number of combinations of different original types and different scanning devices, wherein the step of transforming is carried out with a profile that belongs to an actually used scanning device and the actual original type used (column 4, lines 1-15).

9. Regarding claim 7, Setchell discloses selecting one original type as a superior reference original type (column 3,lines 28-30); making a physical analog color test card as reference color test image from an original of the reference original type, the test card including a color measurement card; and using this reference color test image for creating the profile (column 3,lines 28-40).

10. Regarding claim 10, the steps of process claim 1 performs all of the structural elements of apparatus claim 10. Thus, claim 10 is rejected for the same reasons discussed in the rejection of claim 1.

11. Regarding claim 11, the steps of process claim 2 performs all of the structural elements of apparatus claim 11. Thus, claim 11 is rejected for the same reasons discussed in the rejection of claim 2.

12. Regarding claim 12, the steps of process claim 3 performs all of the structural elements of apparatus claim 12. Thus, claim 12 is rejected for the same reasons discussed in the rejection of claim 3.

13. Regarding claim 14, Setchell discloses a profile generation means for automatically creating a profile on the basis of image data of a digital test color picture and a reference color test picture (column 3,lines 28-40).

14. Regarding claim 15, Setchell discloses a quality control means for controlling the quality of the digital color picture (column 4,lines 1-15).

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 4-6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Setchell US 6836345 in view of Kiyokawa US 2003/0112334.

17. Regarding claim 4, Setchell discloses all of the process steps of claims 1, from which claims 2 and 3 depend on.

18. Setchell fails to disclose respectively assigning the different original types according to similarities in colorimetric properties to one of a number of original categories; setting one original type for each original category as master original; and providing a separate profile for each combination of master original and different scanning device, wherein the step of transforming is carried out with the profile that belongs to the actually used scanning device and to a master original which belongs to an original category to which the actual photographic original belongs.

19. Kiyokawa discloses respectively assigning the different original types according to similarities in colorimetric properties to one of a number of original categories (page 4,paragraph 0069); setting one original type for each original category as master original (page 4,paragraph 0068); and providing a separate profile for each combination of master original and different scanning device, wherein the step of transforming is

carried out with the profile that belongs to the actually used scanning device and to a master original which belongs to an original category to which the actual photographic original belongs (page 3,paragraph 0056-0058).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have modified Setchell wherein Setchell's process steps are applied to assigning the different original types according to similarities in colorimetric properties to one of a number of original categories, setting one original type for each original category as master original and providing a separate profile for each combination of master original and different scanning device, wherein the transformation is carried out with the profile that belongs to the actually used scanning device and to a master original which belongs to an original category to which the actual photographic original belongs. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Setchell by the teaching of Kiyokawa in order to provide a profile for each type of photograph based on the colorimetric values of the photograph.

**20.** Regarding claim 5, Kiyokawa discloses wherein different assignments of original types to the original categories are formed for different assignments of original types to the original categories are formed for different quality requirements and used for a selection of a respective profile (page 3, paragraph 0056).

**21.** Regarding claim 6, Kiyokawa discloses providing test originals of individual original types for an assignment of the different original types to original categories, the test originals carrying a test image having several color measurement fields measuring

the color values of the color measurement fields, comparing the color measurement data of the test originals and assigning the original types based on the comparison of the color measurement values (page 4, paragraph 0064).

22. Regarding claim 13, the steps of process claim 4 performs all of the means of apparatus claim 13. Thus, claim 13 is rejected for the same reasons discussed in the rejection of claim 4.

***Allowable Subject Matter***

1. Claims 17 and 18 allowed.
2. Regarding claim 17, Prior art of record fails to teach of a color measurement strip comprising; a color test image region with a relatively small number of color measurement fields, a color test card region with a relatively large number of color measurements fields and a visual test image region with at least one picture motif suitable for visual color evaluation, wherein the color measurement strip is used in a process of photoelectrically scanning the original by way of a color-enabled scanning device for obtaining scanning data, forming the digital color picture from the scanning data, transforming the digital color picture by way of a color transformation for achieving a colorimetric correspondence between the digital color picture and a reference color test picture and at least one of storing the transformed digital color picture in a preselected format and recording the digital color picture on a data carrier medium.

3. Claims 8,9 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Burleson whose telephone number is 571-272-7460. The examiner can normally be reached Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Moore can be reached on 571-272-7437.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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April 27, 2006